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# The Lusitania Case

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Was Bryan's Resignation  
Justified?

BY

HISTORICUS  
JUNIOR



JUNE 1915

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*Henschel, Albert Edward*

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## PREFACE

The privilege to express one's opinion is one of the most important rights inherent in our free institutions. It involves the sacred Freedom of the Press—the Palladium of Liberty. Especially precious is the exercise of this right, when ignorance, passion or prejudice has seized upon the customary organs of public opinion. But conditions are the more deeply to be deplored when the generality of our press has set itself to the practical suppression or distortion of the arguments favorable to one side of public issues and to the emphasis and glorification of the other. Thus we are driven, in a way, to the older methods of pamphletting, if we would be heard. Thanks to the innate forces of the Americanistic principle, inherited from Britain—for many good things come from there—we still have the right of presenting facts and arguments that may appeal to judgment and reason, in channels other than the newspaper press.

It is hoped that due consideration will be given to the important matters contained in this booklet, and adopted or rejected according to the effect they may have on the thinking reader. If the views are not exactly like the matter browned up every day for popular consumption, that is all the greater incentive why you should apply the acid test of reason, and try, if possible, to form an opinion of your own.

The immediate issue between the United States and Germany resolves itself into a dialectic discussion of what is meant by the loose term "Humanity" in its relation to maritime warfare. To the United States it means a scrupulous regard for the safety of a limited number of passengers who may have occasion to travel within the war zones of Europe, while to Germany, it means safety to herself and her allies, numbering about one hundred and forty millions of people. The United States contends that non-combatants must be safeguarded irrespective of the circumstance that the safety of a small number of non-combatants may be inextricably interwoven with the safe conduct of contraband of war. To the Teutonic Allies "Humanity" means the preservation of their lives, the quick and decisive ending of the war and an emphatic reassertion of the doctrine that all nations shall be allowed to make progress according to their merits and that "world-commerce" shall be free and untrammelled.

## INTRODUCTION

The resignation of Secretary of State Bryan should be effective in clearing the political atmosphere. His dramatic self-elimination from the Cabinet will focus public thought upon the question of peace or war.

The following text of Secretary Bryan's letter of resignation and of the President's acceptance will indicate the issues before the American people:

## SECRETARY BRYAN TO THE PRESIDENT

Washington, June 8, 1915.

My dear Mr. President:

It is with sincere regret that I have reached the conclusion that I should return to you the commission of Secretary of State, with which you honored me at the beginning of your Administration.

Obedient to your sense of duty and actuated by the highest motives, you have prepared for transmission to the German Government a note in which I cannot join without violating what I deem to be an obligation to my country, and the issue involved is of such moment that to remain a member of the Cabinet would be as unfair to you as it would be to the cause which is nearest my heart, namely, the prevention of war.

I, therefore, respectfully tender my resignation, to take effect when the note is sent, unless you prefer an earlier hour.

Alike desirous of reaching a peaceful solution of the problems, arising out of the use of submarines against merchantmen, we find ourselves differing irreconcilably as to the methods which should be employed.

It falls to your lot to speak officially for the nation; I consider it to be none the less my duty to endeavor as a private citizen

to promote the end which you have in view by means which you do not feel at liberty to use.

In severing the intimate and pleasant relations, which have existed between us during the past two years, permit me to acknowledge the profound satisfaction which it has given me to be associated with you in the important work which has come before the State Department, and to thank you for the courtesies extended.

With the heartiest good wishes for your personal welfare and for the success of your Administration, I am, my dear Mr. President

Very truly yours,

W. J. BRYAN.

#### THE PRESIDENT TO SECRETARY BRYAN

Washington, June 8, 1915.

My dear Mr. Bryan:

I accept your resignation only because you insist upon its acceptance; and I accept it with much more than deep regret, with a feeling of personal sorrow.

Our two years of close association have been very delightful to me. Our judgments have accorded in practically every matter of official duty and of public policy until now; your support of the work and purposes of the Administration has been generous and loyal beyond praise; your devotion to the duties of your great office and your eagerness to take advantage of every great opportunity for service it offered have been an example to the rest of us; you have earned our affectionate admiration and friendship. Even now we are not separated in the object we seek, but only in the method by which we seek it.



It is for these reasons my feeling about your retirement from the Secretaryship of State goes so much deeper than regret. I sincerely deplore it.

Our objects are the same and we ought to pursue them together. I yield to your desire only because I must and wish to bid you Godspeed in the parting. We shall continue to work for the same causes even when we do not work in the same way.

With affectionate regard,

Sincerely yours,

WOODROW WILSON.

No lover of America and of the ideals represented in our institutions, can sympathize with the notion that somehow there is not war enough on earth, but that America should be dragged into the cauldron of fire and desolation. We may grope darkly into war but not with our eyes open.

In these pages our national duties with respect to the "Lusitania" will be considered. I stand upon the broad platform of national and international justice as the best aid and security for peace and national welfare.

Mr. Bryan's consistent labors for peace are worthy of all praise. In our endeavor to follow Mr. Bryan's reasons for his resignation and to pass intelligent judgment thereon it will be proper to go into the "Lusitania" question fully.



## The "Lusitania" Case

### NATIONAL MOTIVES IN TREATING THE "LUSITANIA" QUESTION

No nation, that deems itself worthy of respect, can view with unconcern an assault upon its citizens or its sovereignty. The United States was clearly within its right in demanding an explanation of the sinking of the "Lusitania" and in its determination to forestall occasions for a similar frightful catastrophe. It is an indubitable duty of every nation to protect its subjects both at home and abroad.

Though this duty is imperative and unquestioned, it does not by any means exclude the exercise of another high duty—that of a calm and deliberate consideration of all attending facts and circumstances, and of according to a fellow sovereign nation a fair opportunity to be heard.

Our administration, in its endeavor to protect American life and property in Mexico, has shown a wise statesmanship in considering the circumstances of that country. Our government gave fair warning to American citizens to get out of the territory fraught with danger, and then pursued a policy of "watchful waiting"—a policy which has been derided by hot-headed ignorance or cool-headed selfishness—but which has so far avoided the loss of thousands of American lives which would have been sacrificed, in addition to those unhappily gone before, within the zone of Mexican turmoil and trouble.

We have never had cause to regret peaceful solutions.

When, during the Canadian Rebellion of 1838, England, *on the plea of self-preservation*, violated the territory and sovereignty of the United States, we permitted England to present her side of the case in her own way and in 1842 the dispute was finally settled.

The exercise of statesmanlike prudence, which will not precipitate the greater and more stupendous evil of war, in order to

resent a comparatively smaller evil, was evidenced in the case of the ship "*Virginus*" when Spain seized American citizens thereon and executed them on the charge that they were aiding the Cuban Insurrection. Naturally American feeling ran high. But President Grant held his wits together. He gave Spain a full opportunity to state her reasons. War was avoided and history will not impugn either the high, honorable spirit of the United States, nor the wisdom and courage of President Grant.

In the "*Trent*" affair war with England was happily avoided. In the case of the "*Lusitania*," nothing can be gained by *hot spur aspirations.*" The accused nation must have a fair and reasonable opportunity to be heard. That is an elementary principle of all justice. To assume the role of judge, jury and executioner, is repugnant to every sense of right and will not be sanctioned by that love of law and righteousness which is part of the bone and sinew of American character.

The judicial atmosphere must be densely fogged where a defendant is not allowed to demur to an indictment, nor even to make his plea; but is curtly told that he is guilty—that the only question before the court is what shall be done to the offender.

### THE AMERICAN NOTES

The American notes to Germany on the "war zone" and on the "*Lusitania*" questions seem to me to be based upon an erroneous impression of what are the principles of international law applicable to the riotous condition that now prevails in Europe. Another criticism, perhaps not very material, is the categorical form in which the law is laid down to Germany. Propositions of law and fact are couched in language skilfully phrased to import infallible correctness and unanswerable logic, which would exclude the possibility of debate or question. But the form or resoluteness of an assertion cannot save it, if it be erroneous and have not reason and justice to support it. The preliminary answer of Germany indicates a desire not to be deflected from her purpose to have the discussion of differences proceed in the usual and proper paths of fact and reason.

I frankly avow my belief that all the main premises of the American "Lusitania" note are clearly debatable and that it is the part of patriotism to weigh the matter on both sides, in order that our Republic may be sure it is right before it commits itself to a definite course of action.

### A HASTY THREAT

Believing, as I do, that, under all the circumstances, Germany has as perfect a right to proclaim a war zone as England had, and, believing also in the immutable right of self-preservation, I am constrained to take the position that we were too hasty in the threat that we would hold Germany to "a strict accountability," and I cannot accept the statement, presented in the form of a postulate, that "the recent acts of the German authorities are in violation of American rights on the high seas."

### TO SAFEGUARD MORE THAN A HUNDRED MILLION PEOPLE

If it can be demonstrated by the legal authorities hereinafter cited, that the German government acted not only within its rights and within the rules of international law, but that if it had acted otherwise, it would have been guilty of a treasonable disregard of its sacred trust to protect and safeguard more than a hundred millions of people, it necessarily follows that neither the rights of the United States nor of its citizens have been violated.

### EVIDENCES OF HUMANITY

It will be unnecessary to dwell upon the fact that in the large number of instances where the German marine has had occasion to sink vessels, whether war vessels or otherwise, they have always saved combatants as well as non-combatants, whenever possible.

The submarines, except when it involved danger to themselves, not only gave time to lower boats but frequently took them in tow and brought them to areas of safety.

When the German auxiliary cruisers took aboard the crews and passengers of vessels they treated them with kindness and humanity. This is proof against the theory of barbarism and cruelty attaching to the general methods of her maritime warfare. If, therefore, something has happened which would seem to run counter to the general character of her considerate and humane practices, we must look for a reason and then consider whether the reason given is adequate to justify the act.

Even the shallowest mind will be able to grasp the idea that a people that has been so uniformly careful in saving lives, whenever possible, will not suddenly turn to barbarism, and without reason, sink passenger vessels holding non-combatants, including women and children, without giving them an opportunity of escape. The act is so opposed to what any human being, even when depraved would care to do, that we are put to inquiry as to the stress of motive and circumstance that would make such an act seem vital to their own safety.

### GERMANY'S ISOLATION AND HER STRUGGLE AGAINST THE WORLD

This brings us to the point where we must view the situation as it presents itself to the German authorities. If we do not put ourselves in their place we will not be able to judge of their position, and consequently will be unable to think justly and act wisely.

It will not be denied that the warfare against Germany and her allies is both military and economic. This seems to be perfectly legitimate warfare. It is intended to isolate Germany so completely that she will be unable to do any business with neutrals, thus gradually sapping her financial strength, and by preventing any access of food-stuffs and war materials, wear out her lasting power to the point of exhaustion. Germany has reason

to believe that if she is compelled to give up, her conquerors will practically annihilate her.

That the present world-war is not an ordinary contest to which we may conceive the general rules of warfare applicable, but a war to the knife, in which not "*subjection*" but "*extinction*" is the object, may be gleaned from the speech of Winston Spencer Churchill, First Lord of the Admiralty, (*New York Times*, Sept. 12, 1915, page 1) in which he portrayed the awful meaning of this war in the following fateful words:

"IT IS OUR LIFE AGAINST GERMANY'S. UPON THAT THERE MUST BE NO COMPROMISE OR TRUCE. WE MUST GO FORTH UNFLINCHINGLY TO THE END."

Thus Germany finds herself at bay, with every great power of Europe arrayed against her and little powers biding their time, and this not sufficient, the great Republic of the United States, not officially an enemy, but by declaration a neutral, working with might and main, night and day, utilizing her tremendous financial, natural and industrial resources, apparently to a single end, to aid to the utmost in accomplishing the ruin of Germany.

### "THOU SHALT NOT KILL"

If we are to consider the question of humanity we must consider not merely humanity in submarine warfare but also the "humanity" in furnishing the murderous instruments of war. Let us not talk of humanity in favor of non-combatants and forget all humanity in the case of those forced to fight. What humanity is there in making guns and ammunition to kill? Are we not deliberately, for purely sordid considerations, violating the mandate: "Thou shalt not kill?" To sell opium or habit-forming drugs is prohibited because of the public injury resulting; how can we absolve ourselves from the sin of murder if we engage in the traffic of the instruments of murder?

## NEGLECT OF NATIONAL DUTY

Some have sought to justify this infamous murder traffic by a kind of apotheosis to national unpreparedness, suggesting the necessity for a constant market where the unprepared nations may be supplied with arms. This makes a virtue of a disregard of national safety and puts a premium on neglect of official duty. At the present time, it is a mere excuse to permit the cruelty of a long-drawn-out war, which, if the belligerents had to depend on their own resources, would be comparatively short and decisive. The prohibition of the sale of arms during war would not only save lives but would at the earliest moment set the world at peace and allow belligerents and neutrals to pursue their normal avocations. This is a consummation in which the whole world would be benefitted, while the other scheme is cruel, unstatesmanlike, wasteful, and altogether contrary to the dictates of humanity and common sense. But, it is claimed, that if there were no such market for arms, there would be a tremendous piling up of armament, too heavy for nations to bear. My answer is that war is so mischievous an evil, that any thing that tends to cut down its duration and to restore processes of peace, must easily take precedence in a choice of evils.

## A MISCONCEPTION OF THE TERM HUMANITY

Field Marshall Prince Schwarzenberg has aptly said: "War and humanity are two incompatible conceptions." As war is a contest of force, exemplifying in grossest form "man's inhumanity to man," we must realize the awful chasm between humanity and war. The maiming and butchering of fellow men cannot be thought of in terms of humanity. Humanity is the antithesis of war. To speak of "humanity" in the destruction of humanity is a contradiction—a paradox. The only way by which we can possibly think of both, is by one crowding out the other.

Certain rules of amenity are observed in war, not with the idea of preventing the suffering incident to the weakening of



the enemy, but only when suffering is unnecessary to attain that object.

If we wish to glorify humanity we cannot do so by furnishing the means by which the inhumanity is to be maintained. We must prohibit the sale of the instruments by which the war is carried on and if anyone tells us that it would be "unneutral" to stop the war, then let us answer that it is better to be "unneutral" than to be "inhuman." What moral being that can think straight would hesitate for a moment in the choice between such, honorable, noble and human "*Unneutrality*," and the low, miserable alliance in the "*Inhumanity*," "that makes countless thousands mourn."

No one can challenge the rectitude of our ideals. But the *things we do*, are not in accord with the *things we preach*. We cry, "Peace! Peace!" and yet we do the things that prolong war.

Until our souls have been cleansed from this defilement let us not utter the holy name of "Humanity."

If we had abstained from these blood-profits, this world-war would have been over months ago, and for every dollar we make in this immoral and illegitimate manner we would make hundreds in an honest and proper way.

### NORMAL INDUSTRIES LANGUISH

That our regular and normal industries are flourishing is largely evidenced by the great masses of our unemployed and particularly by the recession of the business of the U. S. Steel Co. It appears that only those industries are flourishing which contribute to the attack and injury of Germany, Austria, Hungary and Turkey. Not only are these war industries flourishing, but they are bulging by vast extensions to our armament works and the creation of new shops and the conversion of others as part of the great symposium of death-dealing industry. Sordid pelf for a comparatively few self-seeking and murderous industries is deemed more important than the true statesmanlike policy of stopping the war by withholding the means for its continuance,



and thereby allow all our legitimate industries to revive with tremendous impulse and momentum.

### FICTITIOUS NEUTRALITY

We must not fool ourselves into the belief that such conduct as we are exhibiting, will receive the approval of history or that it is reconcilable with the humanitarian spirit that characterizes our nation as a whole.

I do not blame our people. It is not their fault. It is the fault of the comparatively few great representatives of the money power who are ready to make quick money in this peculiar way.

The judgment of history will pierce the veneer of pretence, and will not be satisfied with the fiction of neutrality. Let us be honest with ourselves. Let us not put "that flattering unction to our soul," that our most potential attack on Germany is within the spirit of either theoretical or practical neutrality.

In living out our fiction of neutrality we are harming countless numbers of our own people, while helping to prolong the contest with the result of killing and maiming hundreds of thousands of human beings that, but for our interference, would be alive and well and following peaceful occupations. This we do in the name of humanity and neutrality, and then we hold up our hands in holy horror if our misdeeds recoil upon us by reason of a condition for which we, ourselves, are responsible. All those men, women and children whom we mourn to-day, would have been safe, had we given heed to that beautiful impulse of humanity, that most truly national trait of the American character, that pleaded that this gruesome traffic might come to an end. But, as frequently happens, the national conscience was stifled—specious reasons were advanced why that which was prohibited to the government, was fine and worthy, when carried on as "ordinary commerce." Just as if a thing could be wrong when done by the government, and right when done by the people of whom that government is the representative.

## A STATE NO WISER THAN THE HUMAN BEINGS OF WHOM IT CONSISTS

James Bryce in his book, "*Neutral Nations and the War*," on page 5, gave voice to the same idea in another form:

"But a State is, after all, only so many individuals organized under a Government. It is no wiser, no more righteous, than the human beings of whom it consists, and whom it sets up to govern it.

"Has the State, then, no morality, no responsibility?

"If it is right," says Lord Bryce, "for persons united as citizens into a State to rob and murder for their collective advantage by their collective power, why should it be wicked for the citizens as individuals to do so? Does their moral responsibility cease when and because they act together? Most legal systems hold that there are acts which one man may lawfully do which become unlawful if done by a number of men conspiring together."

## A NEUTRAL MAY NOT FURNISH ARMS TO A BELLIGERENT

I am well aware of Jefferson's dictum that "Our citizens have been always free to make, vend and export arms," (vol. III p. 558); but I am also aware that he approved of Paine's proposition of a "Maritime Compact for the Protection of Rights and Commerce of Neutrals," which provided:

"And whereas it is contrary to the moral principles of neutrality and peace, that any neutral nation should furnish to the belligerent powers, or any of them, the means of carrying on war against each other;" the powers will prohibit "the exportation or transportation of military stores."

## TRADE IN ARMS AS ORDINARY COMMERCE

The point is constantly being made that dealing in arms is not prohibited to a neutral, if done "in the ordinary course of commerce."

Forgetting for the moment that this commerce is *per se*, immoral, we may well ask whether what the United States is doing is "*in the ordinary course of commerce.*" A single and wholesouled devotion of almost all our national energies to the production and transportation of contraband of war is certainly not what may be termed "ordinary course of commerce," and when these extraordinary activities result in furnishing one side with contraband of war, and no effort is effectively made, or permitted, by which innocent or non-contraband wares may be sent to the other belligerents—to the great harm of our normal and legitimate trade and industries—the situation is certainly anomalous. The freedom of the sea is hardly to be prized when it is all freedom for one side, and all foreclosure for the other.

### SALE OF ARMS ON A LARGE SCALE

There is a high authority in Bluntschli who holds that when the sending of arms assumes such large proportions that, under the circumstances, it may appear to favor one of the belligerents, it should be prevented by the neutral government.

### CONTRABAND OF WAR DEFINED

John Bassett Moore, Proc. Am. Phil. Society, Vol. 51 (Jan.—March 1912) at page 18 says, "The term contraband of war denotes commodities which it is unlawful to carry to the country, or to the military or naval forces of a belligerent." He cites Kent, Woolsey, Manning, Creasy, Holland and others, showing the unlawful character of contraband trade.

During our war with Spain, a number of countries prohibited the furnishing of arms and ammunition of war to either party. Among these are Brazil, Denmark and Portugal. Japan forbade its subjects from supplying "arms, ammunitions, or other materials of direct use in fighting, to the men of war, or other ships used for warlike purposes or privateers belonging to either of the belligerent powers."

## GERMANY'S FRIENDSHIP IN CRITICAL TIME.

Germany's attitude during that war is interestingly given by Ambassador Andrew D. White in his *Autobiography*, vol. 2, page 168:

"As to the conduct of Germany during our war with Spain, while the press, with two or three exceptions was anything but friendly . . . the course of the Imperial Government especially of the Foreign Office under Count von Bülow and Baron von Richthofen, was all that could be desired. Indeed, they went so far on one occasion as almost to alarm us. The American Consul at Hamburg having notified me by telegraph that a Spanish vessel, supposed to be loaded with arms for use against us in Cuba, was about to leave that port, I hastened to the Foreign Office and urged that vigorous steps be taken, with the result that the vessel, which in the meantime had left Hamburg, was overhauled and searched at the mouth of the Elbe. The German government might easily have pleaded, in answer to my request, that the American government had generally shown itself opposed to any such interference with the shipment of small arms to belligerents, and had contended that it was not obliged to search vessels to find such contraband of war."

Let us not forget the financial aid given to the United States during the Civil War. Germany was one of the few powers that loaned us large sums on our bonds when England gave financial and military aid to our opponent. This is the way Mr. Andrew D. White speaks of it on page 169:

"Of one thing I then and always reminded my hearers—namely, that during our Civil War, when our national existence was trembling in the balance and our foreign friends were few, the German Press and people were steadily on our side."

## A CONDITION, NOT A THEORY

But the continued sending of arms and contraband to the allies spells annihilation to Germany. "It is a condition, not a

theory" that confronts the German people. For them it is a question of life or death. The laws under which Germany is impelled to act are not the laws made by convention nor rules of treaty. There is now no such thing as international law in the great debauch of blood and riot going on among the nations. If there be such law, it is "more honored in the breach than in the observance."

#### GREAT BRITAIN'S LOVE FOR INTERNATIONAL LAW

Has Great Britain followed any law but its own will and convenience? When it found a German auxiliary cruiser anchored within the territorial waters of Chili, did not Britain commit the inconceivably cowardly act of sinking the cruiser, against the rules of international law and in violation of the sovereignty of Chili? Did any one bother particularly about that inexcusably wanton act? But that was Britain. That was all right.

#### SELF-PRESERVATION

It is thus Germany's duty—driven into a corner, fighting against the great nations and resources of the whole world—to prevent her enemies from securing arms and ammunition and all other contraband of war, at all hazards, by all means, and irrespective of the nationality that screens the instruments of death intended for her destruction. That this is Germany's duty under the immutable principle of Self-Preservation, a time-honored principle of international law, admits of no question. It is, however, more than a mere principle of international law, it is, in fact, the first and highest law of nations and all other laws, rules and regulations, must give way before it.

Grotius, the recognized Father of International Law, in "Rights of War and Peace," (chap. 2, par. 7), quotes Seneca as follows:

"NECESSITY, THE GREAT PROTECTRESS OF HUMAN INFIRMITY, BREAKS THROUGH ALL HUMAN LAWS, AND ALL THOSE MADE IN THE SPIRIT OF HUMAN REGULATIONS."

## SUBMARINE TO FOIL WAR-OBJECTIVE OF ENEMIES

For obvious reasons Germany is compelled to keep her regular fleet of war-vessels near her borders and can only make use of her submarines to frustrate the war-objective of her enemies. It is quite clear, as our note says, that it is not feasible for submarines always to give the notice and observe the rules applicable to other vessels, in the matter of search, capture or destruction of enemy vessels or those carrying contraband of war.

## GERMANY'S WAR ZONE

The German War Zone notice is not essentially different from that proclaimed by Britain (New York Times, Aug. 12, 1914, page 3) to the effect that Britain would lay mines in the North Sea, in view of the methods adopted by Germany, and that "The British Admiralty must hold themselves fully at liberty TO ADOPT SIMILAR MEASURES IN SELF-DEFENCE." . . . "But before doing so they think it right TO ISSUE THIS WARNING IN ORDER THAT MERCHANT SHIPS UNDER NEUTRAL FLAGS TRADING WITH NORTH SEA PORTS SHOULD TURN BACK BEFORE ENTERING THE AREA OF SUCH EXCEPTIONAL DANGER."

The new situation, created by the advent of the submarine, was wisely provided for by the notice of the war zone, where the German submarine was intended to operate in preventing contraband of war reaching the British Isles. This zone must in effect correspond with that defined by the "Territorial Waters Jurisdiction Act of 1878, viz: "The rightful jurisdiction of Her Majesty, her heirs and successors, extends, and always has extended over the open seas adjacent to the coasts of the United Kingdom and all other parts of Her Majesty's Dominions, *to such a distance as is necessary for the defence and security of such Dominions.*"

The right of Germany to give such notice is predicated upon the right and duty of Self-Preservation. This right is superior



to the right of a neutral to travel on vessels carrying contraband of war within a proscribed danger zone, subject to the risks of mine, aerial bomb and submarine.

Why should our administration give repeated warning notice to Americans to leave Mexico, involving a sacrifice of their property and business interests, and now encourage American citizens whose lives are every bit as valuable as those residing in Mexico, to venture forth into the European arena of war. Would not the suggestions of prudence to keep out of trouble be even more imperative on the sea than on the land?

Do we encourage our children to cross the streets, where automobiles are rushing to and fro? Do we say to our children, "You have an unalienable right to cross the street, when and where and as you like?" No, you will ask them to be careful. Now, the dictates of prudence and common sense must be followed, if we wish to get along in this imperfect world. If we see a fight in the street, we have a perfect right to get into it, but if we get blows we can only blame ourselves. If we see a safe being hoisted with danger signals near, we take the risk if we walk under it—if a red flag gives us warning that a dynamite blast is about to come off, we have the perfect right to ignore the warning if we are willing to take the risk.

### RIGHTS ARE RELATIVE, NOT ABSOLUTE

It is an elementary rule of human conduct that we must so exercise our rights as not to interfere with the rights of others. Very few of the rights we enjoy, are absolute. As between two rights the lesser must give way. As the right of self-preservation is superior to all other rights, it follows as a demonstration that the German right to prevent the success of all measures intended for German destruction, is superior to the right of any non-combatant to travel on ships that carry the means for German destruction. It is inconceivable how any other conclusion can be reached. This is not new law. The right of self-preservation can never operate as an infraction of international law. The law of self-



preservation is self-enacting. It is not made by legislation nor by judges, nor is it a law merely of custom or secured by convention—it is the law that is inherent in nature. It may, of course, be violated by ignorance, accident or design; when violated by design it is known as suicide; and no nation can be held by any rule of law or convention to be obliged to commit suicide.

Let me illustrate what is meant by relative rights. Thus, a wagon has a right of way in a street, but is not allowed to block the tracks of a street car. Each has its right, but one is superior. The lesser right must yield.

In applying this principle with respect to the rights of an American citizen on the high seas, we must allow that the right of self-preservation of a belligerent nation is superior to the right of a neutral individual to travel upon the high seas, because the right of self-preservation is not at all involved in the case of the individual; in other words, he does not have to travel on a guilty ship while a nation at war is bound to preserve its existence. By a “guilty” ship I mean one that gives aid to the enemy. Such ships he must not be caught on, for they contain the seeds of danger. This danger exists by virtue of the imperative requirement that they must be prevented from reaching the enemy port. That is the essential thing. That is the thing, above all things, that the belligerent must seek to prevent, *for if he fails, the national existence is imperilled. Here comes in the great right and duty of self-preservation.* If he can capture the ship, well and good; if he cannot, then he must destroy it, saving the crew and passengers, exerting every power to that end; but if he cannot destroy the ship and also save crew and passengers, then it becomes a question of duty, a question of the trust that he is charged to fulfill. As between the lives of crew and passengers on the one hand and the life of his nation on the other, there is no alternative. Does international law require him to betray his trust and to sacrifice his nation? By no means. When the life of his nation is trembling in the balance, there is only one thing a soldier, a patriot can do—and that is *to do his duty!*

Please see whether I am not amply supported in my contention

of the *paramountcy of the right of self-preservation over all other rights*, in the following citations of high masters of International Law—British authorities and the authorities on that subject in the Appendix.

Halleck's Int. Law, Vol. 1, page 119, §18:

"Another right immediately resulting from the independence of sovereign States, is that of *self-preservation*. *This is one of the most essential and important rights incident to State sovereignty, and lies at the foundation of all the rest.* It is not only a *right* with respect to other States, but a *duty* with respect to its own members, and *one of the most solemn and important duties which it owes to them.*"

Page 120, §19: "*This right of self-preservation necessarily involves all other incidental rights which are essential as means to give effect to the principal end. And other nations have no right to prescribe what these means shall be.*"

Sir R. Phillimore Int. Law, Vol. 1. Chap. 10, Page 312:

"The Right of self-Preservation, *by that defence which prevents, as well as that which repels*, attack, is the next International Right which presents itself for discussion, which it will be seen, may under certain circumstances, and to a certain extent, modify the Right of Territorial Inviolability.

The Right of Self-Preservation is the first law of nations, as it is of individuals. . . .

All means which do not affect the independence of other nations are lawful for this end. *No nation has a right to prescribe to another what these means shall be, or to require any account of her conduct in this respect.*

Page 314: "For International Law considers the Right of Self-Preservation as prior and paramount to that of Territorial Inviolability, and, where they conflict, justifies the maintenance of the former at the expense of the latter right."

This right of self-preservation, which allows an individual, not as an excuse, but as a matter of right to kill, if he has just reason to believe his life to be in danger, extends to nations as well. Can any one doubt that every contraband-bearing ship that arrives in England is a nail in Germany's coffin, if the allies' policy is to go on without interference or interruption? And can any one doubt that Germany has the right and duty to prevent her defeat and extinction by using her submarines? And if it is not always feasible to sink these contraband-laden ships before giving an opportunity to save life, can any one claim that Germany must permit these nails to be driven into her coffin? If people will take the risk of the war zone they must bide the consequence. The loss of life, in such circumstances, is one of the saddest concomitants of war.

#### RUSSIA SINKS NEUTRAL SHIPS DURING JAPANESE WAR

The work, "Cargoes and Cruisers" or "Britain's Rights at Sea" by *Civis*, states that the following powers came to the "London Conference" maintaining the right to sink neutral merchantmen under certain restricted conditions: Germany, the United States, Austria, France, Italy and Russia. The latter country actually exercised that right against England, a neutral, in the Japanese War. The *Knight Commander, Hipsang, Oldhamia* and other British ships were sunk by Russia without it being ascertained, in many cases, whether they were really carrying contraband or not. England protested but no redress was given.

## THE LUSITANIA

In the awful case of the *Lusitania*, a preliminary notice had been given by the zone proclamation, but the notice was ignored. Advertisements had been made, they were not heeded. Telegrams had been sent, but no attention paid. The press has recited that personal appeals had been made, begging and pleading that passengers should not go by that munition-laden, doomed vessel. Oh! the pity of it—those splendid specimens of manhood and womanhood and childhood, to go down to destruction, because the demon war demanded the sacrifice. No one with the semblance of a human heart can fail to weep at the sadness and the loss. Such is war. What could the German authorities do? Knowing, as they did, the tremendous military consequence to the life and welfare of the human interests committed to their keeping, would it have been honorable, decent or just to allow this ship, filled to the brim with “Death to Germany,” to reach port? Does any one for a moment think that the German authorities were anxious to take this human toll? Did they lure the innocents aboard? Did they invite them to come? Or did they do everything in their power, short of physical arrest, to keep them from going?

## THE UNITED STATES ASKS GERMANY TO GIVE UP ITS RIGHT OF SELF-DEFENCE

In the discharge of our duty to protect American lives, can we reasonably demand that Germany renounce a mode of warfare absolutely necessary to her self-defence?

But Germany is asked to give up her submarine warfare. Why not ask at once for unconditional surrender? In the name of common sense, is it not enough to have the world against her, to have us furnish the contraband of war against her, must we also insist upon allowing our citizens to be put aboard to act as shields for the protection of arms and ammunition in order to make sure that they shall reach their destination? Must we

go out of our way, not only to manufacture the means for German destruction, but also to insist that our citizenship and our flag be utilized for that purpose? Is that neutrality in law, neutrality in fact, neutrality in spirit, neutrality in the sense invoked in our day of prayer, or in the neutrality proclamation of our president?

America has no moral or legal right to insist that the presence of an American shall protect a ship carrying contraband of war from the only practical means by which Germany can rid herself of the perils, which guns, powder and ammunition mean in the hands of her adversaries. When these things are put aboard these death-dealing steamers, it must not be supposed that the presence of a noncombatant will give some kind of sanctity or halo to the vessels which should make Germany respect them and allow them to proceed through the war zone to their bloody destination.

#### IMMOLATION ON THE ALTAR OF INTERNATIONAL LAW

Is it conceivable in human nature, that a country against whom these dangers are directed, and having the power to prevent, would say: "Well, these ships carry a neutral flag, they aim at our hearts, but international law requires that we must be martyrs. We have no available battle-ships to intercept or capture them, we must not use our undersea fleet because no law as to the proprieties of undersea warfare has yet been written, then let them pass, let them destroy us, history and the plaudits of mankind will praise the German Kultur and write us down as the finest and politest people that ever went down on the altar of international law."

Ask yourselves, fellow-Americans, if, perchance, we were in war with England and our fleet had been destroyed or bottled up and we had a submarine fleet that could prevent the bringing of ammunition and supplies to England and that the ammunition and supplies were in the vessel of our enemy, and German subjects had been warned by us not to go upon that vessel as we were

going to destroy it, would we, for a moment, hesitate as to what was our duty, our patriotic duty to do? Would the neutrals, by going upon that vessel have the right to prevent us from carrying on our warfare in a way that was demanded by our right of self-preservation? Would the neutral have the right by the infliction of his presence, practically to dictate to us the way in which we shall and in which we shall not carry on our warfare?

The suggestion that the German government shall not avail itself of such forces as are within its power to subdue its British antagonist on the sea, is not only inadmissible but absurd on the face of it.

## NEW CONDITIONS DEMAND NEW RULES

While it is certainly true, as a general proposition, that no one has the right to change the law to suit his own convenience, we must not forget that international law is subject to growth and changes and that the whirligig of time produces changes when the time is ripe. The reasonable question arises whether circumstances have not so altered and revolutionized conditions that old rules and customs no longer satisfy the needs of justice.

On August 31, 1910, Woodrow Wilson delivered the "Annual Address" before the American Bar Association in which he said:

"The old order changeth,—changeth under our very eyes, not quietly or equably, but swiftly and with the noise and heat and tumult of reconstruction.

"In very few ages of the world has the struggle for change been so widespread, so deliberate, or upon so great a scale as this which we are taking part in. . . Society is looking itself over, in our day, from top to bottom, is making fresh and critical analysis of its very elements, is questioning its oldest practices as freely as its newest . . . and stands ready to attempt nothing less than a radical reconstruction."



And then Mr. Wilson continues, in apt and sage advice which I include because the suggestions are of prime and vital value at this time :

"I do not speak of these things in apprehension, because all is open and above board. This is not a day in which great forces rally in secret. The whole stupendous programme is planned and canvassed in the open and we have learned the rules of the game of change. Good temper, the wisdom that comes of sober counsel, the energy of thoughtful and unselfish men, the habit of co-operation and of compromise which has been bred in us by long years of free government, in which reason rather than passion has been made to prevail by the sheer virtue of candid and universal debate, will enable us to win through still another great age without revolution. I speak in plain terms of the real character of what is now patent to every man merely in order to fix your thought upon the fact that this thing that is going on about us is not a mere warfare of opinion. It has an object, a definite and concrete object, and that object is Law, *the alteration of institutions upon an extended plan of change.*"

He then says we ought not to be "*too much in love with precedents and the easy maxims which have saved us the trouble of thinking.*"

This last quotation from the words of our President is of capital importance in supporting the point I wish to make, namely, that changing circumstances beget a need for new rules to fit the new requirements of right and justice and that we cannot be too slavishly bound by precedents that are rendered obsolete by the revolutionary changes of the time. Mr. Wilson goes on as follows :

"The temper of the age is very nearly summed up in a feeling which you may put in words like these: 'There are certain things we must do. Our life as a nation must be rectified in certain all important particulars. IF THERE BE NO LAW FOR THE CHANGE, IT MUST BE FOUND OR MADE. WE WILL NOT BE ARGUED INTO IMPOTENCY BY LAWYERS. WE ARE NOT INTERESTED IN THE STRUCTURE



OF OUR GOVERNMENTS SO MUCH AS IN THE EXIGENCIES OF OUR LIFE'."

Some of the changes, having a distinct bearing upon the controversy between Germany and the United States, are clearly brought out by John Holloday Latane', Professor of History, in an article on "*Problems of Neutrality*," in *The Johns Hopkins Alumni Magazine*, March, 1915, viz:

Page 189: "Another development having far-reaching effects upon the commerce of neutrals is the action of England in declaring the North Sea to be a war area or a strategic area. It has always been the practice of naval squadrons when manoeuvring in the neighborhood of an enemy to assume jurisdiction over that portion of the high sea actually within their sphere of operation and to warn neutral vessels away. During the Russo-Japanese War the use of mines and wireless telegraphy led to an enormous enlargement of the strategic area. It can readily be seen that it would be of vital importance to a belligerent *to exclude from his strategic area all neutral vessels equipped with wireless apparatus*. The use of mines has also been greatly extended and the right of a belligerent to place mines in certain areas under certain restrictions is clearly recognized. In the present case *Great Britain has announced to neutrals that the North Sea is a war area, that has been mined, and that if a neutral ship wishes to avoid destruction, it must, before entering the North Sea, signal to a member of the British squadron and ask for a pilot*. Such action, of course, practically excludes from the North Sea all neutral vessels which do not submit to British search."

Page 190: "*It seems now probable that this practice of proclaiming a strategic area will develop into a clearly recognized principle of law. It is, it is true, in conflict with the older doctrine of the freedom of the seas, but the use of wireless telegraphy, mines, and submarines has changed the conditions of modern naval warfare so*

*completely that new practices will inevitably develop to meet changed conditions and will in time receive the sanction of law. For instance, the day of the old formal blockade has probably passed. It would be very difficult to keep a blockading squadron before a port which was equipped with submarines and automatic torpedoes. The proclamation of a large strategic area will probably take the place of the old blockade. Page 194: If Germany could effectively blockade England with her submarines "she could starve England out in a few weeks."*

The change of conditions is emphatically expressed by Thomas Barclay, Vice-President of the Institute of International Law, in an article entitled "*Neutrality versus War*" in the 19th Century and After, of March, 1915, viz:

*"Submarine and aerial war, machine and the new siege guns seem to have produced a change equally profound, the effect of which is only beginning to make itself felt.*

*"The present feeling on both sides is one of resentment at new methods which are growing up in response to the change, but change there is, and we must examine its consequences with the detachment befitting a new de facto situation."*

The changed methods of warfare are so apparent that it seems most strange to find with what tenacity rigid rules of international law are sought to be applied, such as for instance, were never intended for submarine warfare, because there were no submarines when the rules were made. No nation can be made to give up new weapons of warfare because they do not fit in with old rules of practice. New and improved methods of warfare will find their way into practice and what has always happened will happen again; *i. e.* rules will grow up to fit the weapons, but weapons will not be abandoned because of the present lack of rules. You might as well expect railroads to be operated on laws of the post chaise, on the ground that changed methods of traction are not entitled to new legislation.

When the rules of visit and search grew up, the submarine was not known and consequently the rules appropriate to cruisers and other craft, cannot apply to submarines. So far as rules of humanity are concerned, they have no immediate relevancy to the bloody business of winning campaigns. The laws of war are not laws of "sweetness and light"; they are laws of death and destruction, the very reverse of "the milk of human kindness." While war is war, it is the arbitrament of force; and no injection of rules of humanity can be tolerated for the purpose of taking from one of the belligerents his right to battle for his victory by ways and means which might assure him success, and the denial of which will doom him to defeat. Humanity must seek homesteads more hospitable than fields of battle or water zones parcelled out by contestants as areas of havoc and danger.

The nobler instincts of humanity are ever active in seeking peace; and, when war has unhappily engulfed the nations, our effort should be for peace, and not for the continuance of the contest. That is humanity in its true, large and noblest sense, and that is the "humanity" we should strive for, the restoration of peace not only, but the restoration of good will amongst the peoples most unhappily estranged. If we pursue our God-given mission of healing the wounds and removing the misunderstandings of the peoples of the earth, we shall indeed be blessed, and follow in the humanitarian lines so natural and congenial to our people.

We now come to the consideration of the freedom of the seas.

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## THE FREEDOM OF THE SEAS

### GERMANY'S ATTITUDE ON THE FREEDOM OF THE SEAS

The American note makes felicitous allusion to the constancy of the German attitude "with regard to the sacred freedom of the seas." The reference is historically just, but it would seem that the implied admonition could, with much better propriety, have been addressed to another power.

In the subjoined collection of authorities it will appear that the sacred freedom of the seas has been the great international hope and dream for centuries. Frederick the Great was the champion of that desideratum, and the first to cause a summary of the rights of neutrals on the sea to be prepared. Germany has ever been in the forefront of the powers to secure the inviolability of private property on the sea.

### AMERICA ON THE FREEDOM OF THE SEAS

The following quotations from Franklin and Clay indicate the American feeling on the question of the freedom of private property on the sea.

Benjamin Franklin in 1788:

It is high time for the sake of humanity that a stop were put to this enormity. The United States are now suffering in all their treaties an article engaging . . . that unarmed merchant vessels shall pursue their voyage unmolested. This will be a happy improvement in the law of nations.

Henry Clay in 1826:

Private property of an enemy is protected when on land from seizure and confiscation. Those who do not

bear arms there are not disturbed in their vocations. Why should not the same humane exceptions be extended to the sea? This has been an object which the United States have had much in their heart since they assumed their place among the nations.

For further light on this subject, please see "Address of Charles Henry Butler" before the International Law Association at Buffalo, New York, Aug. 31, 1899; also "Private Property on the High Seas," by G. A. Finkelnburg, *Am. Law Rev.*, Sept.-Oct., 1904, quoting President McKinley in favor of abolishing capture of private property at sea.

#### A HIGH BRITISH AUTHORITY ON THE IMMUNITY OF PRIVATE PROPERTY FROM CAPTURE ON THE HIGH SEAS

Oppenheim, *International Law*, (Vol. 2, page 184):

Par. 178. "But the Declaration of Paris has not touched upon the old rule that private enemy vessels and private enemy goods thereon may be seized and appropriated, and this rule is, therefore, as valid as ever heretofore. On the other hand, there is a daily increasing agitation for the abrogation of this rule. Already in 1785, Prussia and the United States of America stipulated by article 23 of their Treaty of Friendship (see note 2) that in case of war between the parties, each other's merchantmen shall not be seized and appropriated. Again in 1871 the United States and Italy, by article 12 of their Treaty of Commerce, stipulated that in case of war between the parties, each other's merchantmen, with the exception of those carrying contraband of war attempting to break a blockade, shall not be seized or appropriated. Already in 1822 the United States made the proposal to Great Britain, France and Russia for a treaty abrogating the rule that enemy merchantmen and enemy goods thereon can be appropriated; but Russia

alone accepted the proposal under the condition that all other naval Powers should consent. Again in 1856, on the occasion of the Declaration of Paris, the United States endeavored to obtain the victory of the principle that enemy merchantmen shall not be appropriated, making it a condition of their accession to the Declaration of Paris that this principle should be recognized. *But again the attempt failed owing to the opposition of Great Britain.* (The italics are mine).

At the outbreak of war in 1866, Prussia and Austria expressly declared that they would not seize and appropriate each other's merchantmen. At the outbreak of the Franco-German War in 1870, Germany declared French merchantmen exempt from capture, but changed her attitude when France did not act upon the same lines."

Note 2: Martens, R IV p. 37. Perels (p. 198) maintains that this article has not been adopted by the Treaty of Commerce between Prussia and the United States of May 1, 1828, but this statement is incorrect, for article 12 of this treaty—see Martens N. R., VII p. 615—adopts it expressly.

### GREAT BRITAIN, THE ONLY FOE TO THE FREEDOM OF THE SEAS

But Great Britain, from first to last has been the insuperable obstruction to this relief. Once we have attained the Freedom of the Seas, there will be removed the greatest temptation that now lures nations into war. Commerce would then be the means of cementing peoples instead of dividing them. The occasions for war would be few and far between and ideals of peace would be more readily realized.

I can easily understand why the little island of Great Britain will not give up this practice of legalized piracy in war. It is by this "black-hand" menace that she gains and controls the bulk

of the commerce of the world. She is the open or secret enemy of every nation that dares to seek an independent foothold in world-affairs. The basis of her national life is found in the proposition of Sir Walter Raleigh:

"He who commands the sea controls trade and commerce; he who controls trade and commerce commands the wealth and riches of the world; and he who controls wealth controls the world."

### THE SUBMARINE AS A DELIVERER

I see before me in the submarine, the great challenger and destroyer of Great Britain's monopoly of the sea. With that weight lifted from the bosom of the ocean, there will be a new freedom of the seas, allowing all the people of the world to develop trade and industries, with every port an open door to receive and distribute the good things of life as a general blessing to all.

If the coming of the submarine would bring such glad tidings of the new freedom, it would outweigh all the terrible tragedies of this world-conflict. How poor and deluded would our judgment be if we did not take advantage of the great opportunity now before us.

### GERMANY FIGHTS FOR THE RIGHTS OF A PER- PETUAL OPEN DOOR FOR THE COMMERCE OF EVERY NATION OF THE WORLD

Germany is indeed fighting the good fight for humanity. Such an opportunity for securing the freedom of the seas may not come in a hundred years. I ask not that America take sides against England, all I ask is that we shall not take sides against Germany, which bears on her shoulders the burden of humanity in its contest to shake off this "old man of the sea." Several such golden opportunities lay within the powers of past presidents, which were neglected. Let us not neglect it now.



## GERMANY TO CONQUER THE DESPOT OF THE SEA

Germany, if successful, will give us this freedom of the seas. It has been her constant effort and her consistent contention. Germany can act as the deliverer of the world from the awful oppressor that has ruled the sea with despotic sway for centuries and which ruthlessly seeks to destroy the commerce of any and every nation that may compete with, or seek to parallel her own.

British naval bases, extending along our Atlantic coast practically dominate every strategical area. The alert diplomacy of the little isle managed to obtain treaty rights which fairly fettered American enterprise in seeking inter-ocean canal facilities on the Western Hemisphere. She keeps a vigilant eye upon our Panama Canal, and can scarcely forgive us for presuming to retain some control over it. There is no maritime nation in the world unmenaced by her naval stations, shrewdly distributed to control independent commerce of other nations. German audacity must be punished for threatening to interfere with British Proprietorship of the Sea.

Since King Edgar (959-975), the Kings of England claimed dominion of all the seas about England—"mare Anglicanum circumquaque" in the widest sense of the term.

When Grotius wrote his "mare liberum" establishing the principle of the freedom of the seas, King Charles I of England demanded that Grotius be punished and wrote his representative at the Hague: that without his sovereignty in all the British seas he cannot be kept safe. "But commanding the seas, he may cause his neighbors and all countries to stand upon their guard, whenever he thinks fit." *Mare liberum* "must be answered by a defence of *Mare clausum* not so much by the discourses as by the louder language of a powerful navy, to be better understood, when overstrained patience seeth no hope of preserving her right by other means."

## ENGLAND OWNS THE OCEANS

The rulers of England have, since Cromwell's time, followed his declaration: "England will not suffer any other flag than the British to float upon the ocean except by her permission."

Sir Philip Meadows in 1689 wrote, "Observations concerning the Dominion and Sovereignty of the Seas; being an abstract of the Marine Affairs of England." He cites the preamble to the Act of Parliament (An 16, 17 Car II) as follows:

"To equip, and set out to sea, a Royal Navy, for the Preservation of His Majesties ancient and undoubted Sovereignty and Dominion in the Sea."  
Pomeroy Int. Law:

§155: "From the time of Elizabeth to that of Charles II, the English asserted property over all the seas which wash the coasts of Great Britain, up to the shores of neighboring states, and north to the Pole. Under the first Hanoverian Kings, they only claimed a sovereignty. Queen Elizabeth seized some Hanseatic vessels lying at anchor off Lisbon for having passed through the sea north of Scotland without her permission."

When in 1761 the French demanded peace of England, Lord Chatham declared in the House of Lords that "France should not obtain peace, unless she signed the destruction of her marine; that it was enough, if the coasting trade was allowed her, and that England should reserve to itself the sovereignty of the ocean."

Azuni, a celebrated writer on maritime law, said:

"England has always felicitated herself on her superiority at sea, but how shamefully has it been acquired; by the violation of the sacred principles of the laws of nations; by ruining the commerce of every nation, and by keeping so many French seamen to perish in her prisons."

## SENATOR SUMNER ON BRITISH SEA POWER

Senator Charles Sumner in his speech of January 9, 1862, on the Trent affair, covered the general subject of maritime rights, and after praising Britain for her contribution to municipal law, says that this Power in maritime questions arising under the law of nations has too often imposed upon weaker nations her own arbitrary will. "The time has been," he proceeds to say, "when she pretended to sovereignty over the seas surrounding the British Isles, as far as Cape Finistere to the south, and Vanstaten in Norway to the north. But driven from this princely pretension, other pretensions, less local but hardly less offensive, were avowed. The boast of "Rule Britannia, rule the waves," was practically adopted by British courts of admiralty and universal maritime rights were subjected to the special exigencies of British interests. In the consciousness of strength, and with a navy that could not be opposed, this Power *has put chains upon the sea.*

The commerce of the United States, as it began to whiten the ocean, was cruelly decimated by these arbitrary pretensions. American ships and cargoes, while, in the language of Earl Russell, "pursuing a lawful and innocent voyage," suffered from the British admiralty courts more than from rock or tempest. Shipwreck was less frequent than confiscation; and when it came, it was easier to bear. But the loss of property stung less than the outrage of impressment, by which foreigners, under the protection of the American flag, and also American citizens, without any form of trial, and at the mere mandate of a navy officer, who for the moment acted as a judicial tribunal, were dragged away from the deck which should have been to them a sacred altar. This outrage which was feebly vindicated by the municipal claim of Great Britain to the services of her own subjects, was enforced arrogantly and perpetually on the high seas, where municipal law is silent and international law alone prevails.

It is mentioned by Mr. Jefferson, and repeated by a British writer on international law, that two nephews of Washington, on their way home from Europe, were ravished from the protection

of the American flag, without any judicial proceedings, and placed as common seamen under the ordinary discipline of British ships of war. The victims were counted by thousands.

If pretension so intrinsically lawless could be sanctioned by precedent, Great Britain would have succeeded in interpolating it into the law of nations.

Protests, arguments, negotiations, correspondence, and war itself—unhappily the last reason of republics as of kings—were all employed in vain by the United States to procure a renunciation of this intolerable pretension. The ablest papers in our diplomatic history are devoted to this purpose; and the only serious war in which we have been engaged, until summoned to encounter this rebellion, was to overcome by arms this very pretension which would not yield to reason.”

#### WILLIAM J. DUANE ON FREDERICK THE GREAT AND ENGLISH PRACTICES ON THE HIGH SEAS

The Law of Nations Investigated by William John Duane, one of the Representatives of Philadelphia in Penn. Legislature, 1809.

§19: “England, having by every species of injustice to weak and neutral states, raised itself from insignificance to the first rank of commercial power, found that to maintain its consequence it was necessary to observe a loose and indecisive language respecting the laws of nations. It adopted the long exploded authority of the *Consols de Mare*, and obeyed it whenever it was its interest to do so. Pursuing its usurpation, in the war with France and Spain in 1745, a number of Prussian vessels laden with innocent goods, but belonging to belligerents, were seized and carried into British ports. Frederick the Great, immediately retaliated by sequestrating the mortgage claims upon Silesia, which England held under the treaties of Breslau and Dresden. Before he took this decided step in his own defence, and in support of

all neutral states, he had an exposition drawn up of the principles, by which he was actuated. This was the first time that the rights of neutrals were formally discussed and explained."

### PREDIGESTED MENTAL PABULUM

The trouble with us is, that those who regulate what goes for our public opinion, do not want the war to end unless it is ended in favor of the British Allies. Any old reason is supposed to be good enough for the American public who get their mental pabulum usually in predigested form. The Pro-Britishness of our press is just now a vogue and a creed that brook neither reason nor argument. I do not wish to be understood as opposed to the restoration and maintenance of good will between the United States and Britain, but I regret that it should be at the expense of good feeling with Germany or that of any other nation. We need the good will of all.

### PROFESSOR ROLAND G. USHER ON THE NEUTRALITY OF THE UNITED STATES

Professor Usher in the *New York Tribune* of May 30, 1915, urges the United States government to abstain from war with Germany because he fears that even a temporary let-up in furnishing arms and ammunition to the British Allies would enable Germany to gain a quick victory and wind up the war. This is what he says, among other things:

"It will be apparent, therefore, that the efficiency of the defensive campaign of the Allies—to say nothing of an offensive campaign—will depend entirely upon the continuance of the stream of ammunition, equipment and food, which the United States is sending them every week. This is a palpable and well known fact, and is not questioned. The assistance of the United States is vital to the enemies of Germany. We are already doing Germany about as much damage as we can under the cir-

cumstances. We are already giving her enemies about as much aid as they can utilize."

## BRITISH POLICY TO PREVENT THE UNITED STATES FROM ATTAINING ITS HIGHEST DEVELOPMENT.

When I consider the constant British efforts to thwart American interests from the inception of our Union to this very day—how Britain took sides most unneutrally against us in our Civil War—even as we are now unneutrally aiding her against Germany—how she poisoned the wells of thought against us in that crucial test of our national existence by the invention of tales of northern cruelty so black that the so-called "Belgian atrocities," absolutely pale into insignificance—how our great journal, the *New York Times*, battled most righteously against the unconscionable slanders cast upon American humanity and civilization during our Civil War—how the attacks upon our rights and interests have been continued without respite or intermission—compelling us to reverse our policies and legislation in the matter of the Panama Canal tolls because otherwise our president would be at a loss how to deal with exigent problems affecting our most intimate foreign interests—how we were not allowed to pursue the policy of buying ships to take care of the commerce denied to other nations by reason of this war—a policy most dear to the heart of our president, and which, if it had been permitted to us, would have given us a good start in the race for international trade—how our commerce is now harassed and sand-bagged—how we are being egged on to plunge into the maelstrom of war—which, no matter how it would result, would vouchsafe to us no possible compensations, but would certainly deprive us of our principal vantage ground, of being the only great power unweakened by the economic and physical waste of war and the bitterness of feeling that so long remains to impede future commerce and good relations—how, if we keep our heads level long enough to think of our own interests instead of continuing to play the part assigned to us of pulling British chestnuts out of the fire—when I consider all these things and



reflect that we are, after all, a practical people, I feel that sooner or later the spell and hysteria will disappear, and that our Republic, that assembles and assimilates the force and vigor and all that is best in the peoples and races of the world, so wonderfully pictured by the President in his recent Philadelphia speech to newly-made citizens, will see the wisdom of sober second thought, will resist the temptations of acrid passion and prejudice, and will rise to the heights of reason, justice, peace, and good will to all mankind.

## APPENDIX

The Appendix speaks for itself. Under various headings are grouped excerpts from high and instructive authorities which throw light upon a number of important questions involved in the war. They furnish ample food for thought and it is deemed well to let our people read what great men have said without attempting to sway opinion by comment. If we could only bring people to think for themselves, much would be gained for the general welfare.

### VESSEL ON THE HIGH SEAS IS A PART OF THE TERRITORY OF THE NATION TO WHICH SHE BELONGS

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In the letter of Mr. Webster to Lord Ashburton, of Aug. 1, 1842, he states that

“A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation.  
(2 Moore’s Digest 287).



## SELF-PRESERVATION

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In Baty Int. Law at pages 100 and 101 the author refers to the fact that the United States government endeavored to impress Mexico with the right of the United by rules of absolute necessity to invade Mexican territory. He shows where Secretary of State in letter to Ellis, Dec. 10, 1836, (20 S. P. 1419) invoked "*the immutable principles of self-defence—the principles which justify decisive measures of precaution to prevent irreparable evil.*"

In "War Hypocrisy Unveiled" by Albert E. Henschel, we find the following on "The Right of Self-Preservation," pages 24 and 25:

"Germany invokes this rule, which is not only sanctioned by the principles of International Law, but which is divinely fixed in the instinct of every thing that lives—the impulse of self-protection and of self-defense.

"It will be seen from the following expressions of the most eminent authorities on International Law, that *the right of self-preservation precedes and underlies every other obligation.* All treaties are subordinated and subject to this basic and inherent right. It is implied, and read into, every treaty and contract, anything to the contrary said, notwithstanding. *This primary right of existence cannot be lost or bargained away. It is unalienable. . . .*

### BRITISH AUTHORITIES ON LAW OF SELF-PRESERVATION

#### 1. Phillimore, Int. Law, Chap 10 (CCXI):

"The Right of Self-Preservation is the first law of nations, as it is of individuals. \* \* \* It may happen that the same Right may warrant her in extending precautionary measures *without* these limits, and even

in transgressing the borders of her neighbor's territory. For International Law considers the Right of Self-Preservation as prior and paramount to that of Territorial Inviolability, and, where they conflict, justifies the maintenance of the former at the expense of the latter right."

Twiss, Int. Law, page 3:

"The State or Nation is thus under a primary obligation to preserve itself; in other words, Self-Preservation is a primary duty of National Life."

Page 4:

"The right of Self-Preservation accordingly gives to a nation a moral power of acting in regard to other Nations in such a manner as may be requisite to prevent them from obstructing its preservation or its perfection. (Vattel L II C4 Sec. 49.) This Right is a perfect Right, since it is given to satisfy a natural and indispensable duty."

Hall, Int. Law, 4th Edn., p. 281:

"In the last resort almost whole of the duties of states are subordinated to the right of self-preservation."

L. G. C. Laughton (United Service Mag., Vol. 29 (N. S.) 1904, page 226, in a very interesting article on "Belligerents and Neutrals," says:

"It is an axiom of international law that a State has the right to take measures to secure its existence."

#### THE RIGHT OF SELF-PROTECTION NULLIFIES TREATIES

Pomeroy, Int. Law, 351, cites Martens, Droit des Gens, Vol. II, Ch. II, Sec. 52:

"\* \* \* Nevertheless, the right of self-preservation authorizes a nation to *recede from a treaty* which

it cannot fulfill without causing its own destruction; and this faculty is even a tacit condition in all treaties, and especially in alliances."

Ortolan is then cited:

"Nevertheless, some publicists have observed that when a treaty leads directly to the destruction of the state, that state has the *right to treat it as null*. This is an evident and incontestible fact, based upon the right of self-preservation. For moral beings, as well as for individuals, there can be no obligatory promise when this promise is of suicide."

#### LAW OF NECESSITY

Oppenheim, Int. Law, Vol. 1. Page 177:

§ 129. "From the earliest time of the existence of the Law of Nations, self-preservation was considered sufficient justification for many acts of a State which violate other States." . . . "Thus, self-preservation is a factor of great importance for the position of the States within the Family of Nations, and most writers maintain that every State has a fundamental right of self-preservation." Page 178: "Such acts of violence in the interest of self-preservation are exclusively excused as are necessary in self-defence." Page 179: "The reason of the thing makes it, of course, necessary for every State to judge for itself when it considers a case of necessity has arisen, and it is, therefore, impossible to lay down a hard and fast rule regarding the question when and when not a State can take recourse to self-help, which violates another State. Every thing depends upon the circumstances and conditions of the special case."

Remarks on The Letter of "Historicus," Charles G. Loring, Boston, 1864:

Page 39: "No nation is bound to stand unresistingly quiet and behold the means of its destruction furnished to its enemy by a powerful neighbor. The duty of self-preservation, lying at the foundation of all law, civil and national, if conflicting with an otherwise lawful right of trade, confers the right of preventing and repressing such aid by forcible resistance, with all the resources at command, including those of war, if needful for the purpose. Such aid, under such circumstances, however, otherwise, consistent with the law of nations, becomes substantially complicity or alliance with the enemy, and may be lawfully treated as such."

Thomas Waraker, L.L.D., "Naval Warfare of the Future":

Page 24: "By all means, let every one who has any authority or influence inculcate the duty and the expediency of conforming national as well as individual action to rules and principles. But at the same time let not caution be lulled to sleep, and a foolish expectation be formed that these rules in the smallest degree enable a nation to dispense with a single safeguard—a single weapon of defense. It is when the strong man is armed that his goods are at peace. No one supposes that he is disparaging morality or law, because he provides himself with bolts and bars and other means of self-defense, to which, in the last resort, he may find himself driven; and, similarly, the provision of every possible means of national self-defense implies no disregard for International rights and duties, but is a pure matter of prudence, and is the first of the duties which a government owes to its subjects—a duty which the subject should use his best endeavors to urge upon his government."

Page 36: "It could never be pretended that any law or morality could require an independent nation to destroy itself, or deprive itself of the means of self-

defense, or so to weaken them as to facilitate its own subjugation."

Lord Ashburton, British plenipotentiary to Mr. Webster, Sec. of State, July 28, 1842:

"There are possible cases in the relations of nations, as of individuals, where necessity which controls all other laws, may be pleaded; but it is neither easy nor safe to attempt to define the rights or limits properly assignable to such a plea. This must always be a subject of much delicacy, and should be considered by friendly nations with great candor and forbearance. The intentions of the parties must mainly be looked to."

Mr. Webster, Sec. of State to Lord Ashburton, Aug. 6, 1842:

"Undoubtedly it is just, that, while it is admitted that exceptions growing out of the great law of self-defense do exist, those exceptions should be confined to cases in which the necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."

Alexander Croke, L.L.D., Advocate in Doctors' Commons in his "Remarks on Mr. Schlegel's Work on Visitation of Neutral Vessels under Convoy (1801), says at page 18:

"It is to be observed that the rights of war externally against the Public Enemy (in which are included all his individuals) are **naturally** and originally unlimited. Primarily, and by the natural law of nations, which is nothing but the law of nature and universal justice transferred from individuals to communities, all modes of hostile violence are legally practicable and the use of one instrument of destruction is just as legitimate as another. The practice of mankind influenced by different considerations of humanity, and convenience, has agreed in confining the ordinary operations of war within certain

modified bounds; and so far as universal practice has imposed a limitation, so far that limitation is to be respected in the common exercise of hostility; though perhaps *extreme cases may be put in which the original rights of self-defense might warrant a recurrence to a degree of hostile activity beyond it.*"

Wm. Beach Lawrence Argument Before Mixed Comm. on British and American Claims, 1873, page 3:

"All the pretence which a belligerent can have to interfere with the unrestricted use of the ocean by neutrals, arises from *considerations of self-defence or from the right to prevent acts, which in their result, may tend to benefit the enemy.*"<sup>3</sup>

The Reality of War, an introduction to Clausewitz, by Major Stewart L. Murray, late Gordon Highlanders—1909:

"*To introduce into the philosophy of war itself a principle of moderation would be an absurdity. We, therefore repeat our proposition that war is an act of violence which in its application knows no bounds.*"

The author cites with approval General von der Goltz, p. 112:

"*A state is not justified in trying to defend itself with only a portion of its strength, when the existence of the whole is at stake.*"

Article 49 of the Declaration of London, says:

"As an exception, a *neutral vessel . . . which would be liable to condemnation may be destroyed, if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.*"

Grotius in "Rights of War and Peace":

Page 76: "It has already been proved that *when our lives are threatened with immediate danger, it is lawful*

*to kill the aggressor, if the danger cannot otherwise be avoided. \* \* \** We must observe that this kind of defense derives its origin from the *principle of self-preservation, which nature has given to every living creature, and not from the injustice or misconduct of the aggressor . . .* For I am not bound to submit to the danger or mischief intended, any more than to expose myself to the attacks of a wild beast."

Page 77: "Thomas Aquinas, if taken in a right sense, has justly observed, *that in actual self-defense, no man can be said to be purposely killed.* Indeed, it may sometimes happen that there is no other way for a person to save himself, than by designedly doing an act, by which the death of an aggressor must inevitably ensue. *Yet here the death of any one was not the primary object intended, but employed as the only means of security, which the moment supplied.*"

Page 85: "What has been already said of the right of defending our persons and property, though regarding chiefly private war, may nevertheless be applied to public hostilities, allowing for the difference of circumstances."

## STATE NOT RESPONSIBLE FOR LOSSES OF FOREIGN SUBJECTS THROUGH LEGITIMATE ACTS OF MILITARY OR NAVAL FORCES

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Oppenheim Int. Law, (Vol. 1, Sec. 154):

"An act of a State injurious to another State is nevertheless not an international delinquency, if committed neither wilfully and maliciously, nor with culpable negligence. *Therefore, an act of a State committed by right or prompted by self-preservation in necessary self-defense does not contain an international delinquency, however injurious it may actually be to another State.*



And the same is valid in regard to acts of officials or other individuals committed by command or with the authorization of a government."

Oppenheim, Int. Law, (Vol. 1, Page 163) :

"But it must be specially emphasized that a State never bears any responsibility for losses sustained by foreign subjects through *legitimate* acts of administrative officials and military and naval forces. Individuals who enter foreign territory submit themselves to the law of the land, and their home state has no right to request that they should be otherwise treated than as the law of the land authorizes a state to treat its own subjects."

Mr. Cass, Sec. of State to Mr. Burns, M. C., April 26, 1858:

"When Mr. Butts domiciled himself in Nicaragua, he knew that the Republic was in a state of war, and *assumed therefore the necessary hazards* which attend the residence even of a neutral in a belligerent country. In estimating these hazards, he probably weighed against them the profits which he hoped to derive from this business, and if he has been disappointed in his expectations, this government can only lament that it is unable to afford him any remedy."

Mr. Seward, Sec. of State to Count Wydenbruck, Austrian Minister, Nov. 16, 1865:

"It is believed that it is a received principle of public law, that the subjects of foreign powers domiciled in a country in a state of war, are not entitled to greater privileges or immunities than the other inhabitants of the insurrectionary district. If, for a supposed purpose of the war, one of the belligerents thinks proper to destroy neutral property, the other cannot legally be regarded as accountable therefor. By voluntarily remaining in a country in a state of civil war, they must be held

to have been willing to accept the risks as well as the advantages of that domicile. The same rule seems to be applicable to the property of neutrals, whether that of individuals or of governments in a belligerent country. It must be held to be liable to the fortunes of war."

Mr. Fish, Sec. of State to Mr. Niles, Oct. 30, 1871 :

"It is an undoubted principle of public law that when one power, in the exercise of its sovereign rights, deems it proper to exercise acts of hostility against the territory of another, the citizens of a foreign state, residing within the arena of war, whose property may be injured or destroyed during the war, have no right to demand compensation on the ground of their being citizens of a third power, for losses which the necessity of war may bring upon them in common with the citizens of the state invaded."

Statement of Spanish Treaty Claims Comm., April 28, 1903 :

(8) . . . "It is undoubtedly the general rule of international law that concentration and devastation are legitimate war measures. To that rule aliens as well as subjects must submit and suffer the fortunes of war. The property of alien residents, like that of natives of the country, when in the 'track of war,' is subject to war's casualties, and whatever in front of the advancing forces either impedes them or might give them aid when appropriated, or if left unmolested in their rear might afford aid and comfort to the enemy, may be taken or destroyed by the armies of either of the belligerents ; and *no liability whatever is understood to attach to the government of the country whose flag that army bears and whose battles it may be fighting.*"

## CHARACTER OF WAR

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Two speeches by David Urquhart (Jan. 20 and 27, 1862) :

### THE RIGHT OF SEARCH

Page 31: "A declaration of war is a sentence of death—a sentence of death pronounced by one people against another people. If so, then it follows that you recognize that that awful sentence shall only issue justly, and then that no one shall interfere to interrupt the exercise of the means by which it shall be carried into execution."

\* \* \* "Having come to the decision to pronounce that sentence against another people, *we should be traitors to the law and not only to the law but to ourselves, if we suffered any one to come between us and the execution of that necessary duty.*"

Thomas Waraker, L.L.D., Barrister at Law (Page 20) :

### "NAVAL WARFARE OF THE FUTURE"

"War is the state of nations contending in arms. The contention is, therefore, one of force, not of right, and each must put forward such force as it possesses in such mode as it deems most advantageous to itself, *i. e.*, as will put the greatest amount of pressure upon the opponent to reduce him to submission."

Page 56: "War is not a game which is played according to certain rules for the amusement of spectators, or a trial of skill in which the performers are to be handicapped and placed at the outset as nearly as possible upon an equality, but a life and death struggle, in which each side must and will, and ought to put out his entire strength in the way that he can best use it, and any previous engagements not so to use it are worthless and

void. The only rule of war is the rule of winning campaigns. No one will, it is to be presumed, deny that war is a contest of force. To talk of a contest of force in which either side is not to use his force is a contradiction in terms."

Page 58: "All unnecessary infliction of suffering is wanton, and it must be unnecessary, if it produce no result. The warrior has to ask himself, not if a given course of action will cause suffering, but whether it will produce the effect for which he adopts the action—*viz.* the reduction of his opponent—and will do so at the least possible cost to himself. Criterion of the legality of warlike measures, as between the belligerents, there is none—*of the moral justification there is but one*—that above stated—*the productive character of the course adopted.*"

Page 67: "War itself is so tremendous an evil that, if its existence can be justified, all modes of carrying it into effect must be justifiable."

Thomas Gibson Bowles, M. P., London, 1900 (Page 20) :

#### THE DECLARATION OF PARIS OF 1856

"The final object and end of all warfare is to reduce the enemy to submission; and unless the operations of naval warfare can be made so to act upon the enemy as to diminish his material resources for the continuance of the war, so to injure him so to produce weakness and weariness, and so to increase that weakness and weariness as to bring him nearer to submission—unless this effect be caused, the operations themselves, however brilliant or glorious, must be held to have failed in their object."

Phillimore Int. Law, (Vol. 3, Page 114):

"War is a lawful mode of obtaining redress and adjusting differences between Independent States, and as this end requires that compulsory means of destruction and distress should be inflicted upon the persons and property of the enemy, no neutral state has a right, for the sake of private advantage, to prevent these compulsory means from producing their effects."

Page 115; "*The rules and principles of war, are the same . . . whether it be carried on by sea or by land.*"

#### RISKS OF NON-COMBATANTS

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Halleck's Int. Law 4th Ed., (108, Page 2):

"They, therefore, have no right to take the lives of non-combatants \* \* \* *unless the same should be necessary for the object of the war.*" (Citing Vattel Book III, ch 8 § 138; Wheat. Elem. Int. Law, pt. 4, ch 2, §2; Rutherford, *Institutes* b. 2 ch 9 § 15; Burlamaqui c 5 pt. 4 ch 6; Cornu v. Blackburne, Doug. Rep. p. 644; De Felice, Droit de la Nat. C. 2 lec. 25, Riquelme, *Derecho Pub.* lib. 1, tit. 1, cap. 12).

Grotius, "Rights of War and Peace, (Page 293):

"It frequently occurs as a matter of enquiry, how far we are authorized to act against those, who are neither enemies, nor wish to be thought so, but who supply our enemies with certain articles. . . . As to conveying articles of the first kind, it is evident that any one must be ranked as an enemy, who supplies an enemy with the means of prosecuting hostilities." . . . "If that power, for instance, is besieging a town, or blockading a port, . . . the person who furnishes the enemy

with supplies, and the means of prolonged resistance, will be guilty of an aggression and injury towards that power."

## DUTIES OF NEUTRALITY

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The U. S. vs. Steamship "Meteor," closing argument in behalf of the U. S., by Sidney Webster, (1866), quotes (page 11) an article in the *London Law Times*, for Sept. 19, 1863:

"If a nation permits anything to be organized and constructed within its boundaries, what is plainly designed for the use of one belligerent, it is guilty of a very clear breach of neutrality against the other. By a *loose*, and, as we believe, *highly improper* reading of the law, it has been taken for granted that it is not against the principles of international law for a neutral power to permit its subjects to sell munitions of war to a belligerent power. It is held that a contrary principle would interfere too much with the ship-builders of the Mersey and the Clyde, and the gun-makers of Birmingham, to be tolerated. But it appears to us that there are some things which in the estimation of rightly thinking men, may be of even higher importance than the prosperity of the Birkenhead ship-owners or the Birmingham gun-makers, and, among them we may be permitted to reckon *a reverence for law* and the preservation of the national honor. It may be that, if we were to put the spirit of the law into force—that spirit which arms the proclamation of the Queen when she prohibits the sale of all munitions of war—by preventing ships evidently built for warlike purposes, and cargoes of lethal weapons, except upon proof that they were not to be used in a quarrel as to which we are neutral; it may be that in such a case a few men would have to get rich more slowly; but, at any rate, the nation would be saved from the imputation of the guilt of blood—a guilt which is equally abhorrent where it sullies the reputation of a man or of a people."

Thomas Gibson Bowles, M. P., (Page 68) :

DECLARATION OF PARIS

"Neutrality consists in standing utterly aloof from taking any part whatever in a struggle between belligerents. It consists not in impartiality in the conflict but in abstention from it; and this shows us at once that a neutral cannot have any rights at all as a neutral, for no rights can accrue to him out of a conflict with which he has nothing to do. He retains the common rights that all nations have in time of peace; he neither does nor can gain any new rights, but he has also, arising out of the war, the obligation of his neutrality, which lies in this, that he must now exercise his common rights so as not to take any part in the war. He has no new rights, but he has a new duty, that of complete abstention from the conflict, and unless he fulfills that duty, he ceases to be neutral. \* \* \* *The rights of a state fighting for national existence are admitted and declared to be superior to the convenience of a state trading for individual profit. . . . The principle is, therefore, clear, that when a war arises even the common rights of the neutral are subject to limitation in their exercise so far as that limitation has now become necessary from the new state of things, in order to secure that the neutral shall be neutral and shall abstain from the war.*"

Halleck's Int. Law :

*"Nor is it correct to say that if the neutral merchant is willing to incur the risk of capture and condemnation, he may engage, with entire security of conscience, in a trade forbidden by the law of nations. The act is wrong in itself, and the penalty results from this violation of moral duty, as well as of law. The duties imposed upon the citizens and subjects flow from exactly the same principle as those which attach to the government of the*



neutral states. 'Where he supplies to the enemy,' says Duer, "munitions or other articles contraband of war, or relieves with provisions, or otherwise, a blockaded port, although his motives may be different, his moral delinquency is precisely the same. By these acts he makes himself personally a party to a war, in which, as a neutral, he had no right to engage, and his property is justly treated as that of an enemy. (Citing Duer, *On Insurance*, vol. 1, pp. 531, 754, 755, 772-775; the 'Shepherdess', 5 Rob. 264; Pistoye et Duverdy, *Traite des Prises*, tit. 6 ch. 2 sec. 3; Hautefeuille, *Des Nations Neutres*, tit. 15.

By George Bemis, Boston, 1866, (Page 176) :

#### AMERICAN NEUTRALITY

"I cannot sympathize with that defense of commerce which would justify the pursuit of neutral gain even to selling weapons of war on the battlefield to combatants whose hands are red with slaughter. If such sort of traffickers insist upon the right of plying their vocation, I say, let them be subjected to the hazards and hardships of war. In my view, a transport or a store-ship is as much an auxiliary to war as a fighting-ship made such by means of the stores and troops which that transport is intended to supply, and if we forbid the furnishing of the latter, to preserve neutrality, why not the former as well?

"Some may reply to this suggestion, perhaps, that the supplying of transports to a belligerent falls within that class of things which a neutral may lawfully do, provided he does it for both parties indiscriminately. That seems to have been President Pierce's point of view, in his annual message of December, 1854. But I protest against this whole notion of balancing a wrong done to one party, by holding out that we are ready to do the same thing impartially for the other. So far as Ameri-

can law has lent an ear to this doctrine, it has been pretty well exposed in the 'Alexandra' law hearing in a discussion over the "Estrella" case between Baron Bramwell and Sir Roundell Palmer—the latter of whom stood up for Judge Livingston's opinion in that case as long as he could ('Alexandra' Law Hearing, pp. 328, etc.). Sir Robert Phillimore says very tersely and very truly of this sort of balancing of wrongs, 'that it may be *impartial*, but it certainly is not *neutral*.' (3 Com. Int. Law, p. 221).

Page 179: "Need I ask, then—taking warning from the late experience of the Confederate rebellion and its almost indefinite prolongation through the aid furnished our secessionists by British Enfield rifles and British Whitworth and even Armstrong cannons—whether it is worth our while to any longer advocate a doctrine of neutrality, fraught with such pernicious consequences to us as belligerents?"

Stat. of U. S. 1838, ch. 31, (U. S. Statutes at Large, Vol. 5, page 212, § 1):

"Be it enacted, etc., that the several collectors, naval officers, etc., of the United States, shall be \* \* required to seize and detain *any vessel, or any arms or munitions of war*, which may be provided or prepared for any military expedition or enterprise against the territory or dominions of any foreign prince or state, etc."

Senator Morton, Jan 10, 1870, introduced similar bill 41 Cong., 2d session.

Thomas Waraker, LL.D., (Page 119):

#### NAVAL WARFARE OF THE FUTURE

"The neutral asserts that he has no interest in the war, and therefore ought to be unaffected by it. But

in the first place it is difficult to see how he can be entirely unaffected. He must be affected as regards blockades and carriage of contraband. \* \* \* He gives himself interest in, and he makes himself affected by the war by carrying the belligerents' commerce, and if he claims to protect that commerce, he makes himself so far a participator in the war, and passes out of the true character of a neutral. In whatever degree it is important for the belligerent that he should capture his enemy's property, in the same degree its protection by the neutral is detrimental to him, and obstructive of his military operations. The neutral can only be absolutely unaffected by the war if he keep himself clear of all intercourse with either belligerent."

Page 120: "The province of the neutral is not to interfere in the operations of either belligerent. The very term 'neutral' implies that no aid is to be given to either of the conflicting parties. Any such aid involves participation in the strife, and to obstruct one is to aid the other. If you and I were fighting, Jones would not be neutral if he struck me, or if he saved you from my blow. Nor would it mend the matter that he knocked you down too, or shielded me too, from your blows. He would probably only prolong and exacerbate the contest and enlarge its field, as whichever of us might prove the victor would desire to thrash him for his pains.

"Similarly in International contests, neutrality consists, not in equally obstructing or giving equal aid to both belligerents, but in absolute non-interference. The aid or the obstruction cannot be equal to both. It must act adversely to the stronger and favorably to the weaker power, as it must diminish the ratio of the superiority of the former.

"For the neutral to claim the right to protect the property of the belligerent from the attacks of his enemy

is a claim to obstruct the one and to aid the other party and is an interference in the operations of war."

Mr. Paul Fuller in the *Atlantic Monthly*, February, 1915, page 145, collates some of the authorities on neutrality as follows:

"Vattel defines neutrality as strict impartiality toward the belligerents in what relates 'solely to war', with the obligation to give no assistance, nor furnish anything of direct use in war. Hübner defines it as complete inaction with reference to the war and exact impartiality with regard to the means of carrying it on.

"Hautefeuille defines the neutral nation as that which abstains from taking part in the conflict, and from any act of hostility, *direct or indirect*.

"Bluntschli defines neutral states as those who take no part in military operations in favor of or to the detriment of either of the belligerents, and neutrality," he adds, "consists in maintaining peace on one's own territory, and taking no part in the war between third parties. . . .

"Hall tell us 'The Neutral State is bound not to commit any act favoring one of two belligerents in matters affecting their war' . . . Jefferson . . . lays down the same rule, that 'no succor should be given to either in men, arms, or any thing else directly serving for the war'. Mr. Fuller then cites Lord Howick that 'a strict and honest impartiality, so as not to afford advantage in the war to either, and so as not to render assistance to one of the belligerents in escaping the effect of the other's hostilities' is what honest neutrality consists of."

## GROWTH, PROGRESS AND CHANGES OF INTERNATIONAL LAW

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Oppenheim Int. Law, (§ 34, vol. 1) :

"The growth of the law through custom goes on very slowly and gradually, very often too slowly to be able to meet the demands of the interests at stake. New interests and new inventions very often spring up with which customary law cannot deal. Circumstances and conditions frequently change so suddenly that the ends of justice are not met by the existing customary law of a state."

Thomas Waraker, L.L.D., (Page 26) :

### "NAVAL WARFARE OF THE FUTURE"

"Every custom has originated in a repetition of certain actions under given circumstances, and the action was first introduced as appearing to the actors to be expedient as tending to a result which they desired to accomplish, and the same expediency leads to a repetition of the action, until at length it forms a custom and is acted upon without direct reference to its expediency, but simply because it is the custom.

Page 28: "Thus, if action be taken opposed to general principles, it will be endeavored to show that special circumstances take the particular case out of the scope of one general principle, and cause another to be applicable, as Sir W. Scott did when dealing with the English orders in Council, 1806, 1809. The confiscation of neutral goods was contrary to the general principle, but Napoleon's Berlin decree having made them under certain circumstances confiscable, the English action proceeded on the principle of reciprocity and reciprocity was a principle recognized by International Law."

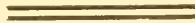
J. Mac Donnell, Esq., Master of the Supreme Court. *Journal Royal United Service Inst.* Vol. 42 (1898) page 787:

RECENT CHANGES IN THE RIGHTS AND DUTIES OF BELLIGERENTS  
AND NEUTRALS ACCORDING TO INTERNATIONAL LAW

"International law consists of a collection of usages, practices, traditions, rules and conventions, never fixed, though endeavors are constantly being made to stereotype this collection. Never was this state of transition more marked, never were changes more rapid and frequent, than at present. International law is not a mere store-house of rules coming down from a far-off past, it is a living and a growing law, some parts of it once important are in process of decay; in other parts is life and the promise of it. International law has no recognized organ or mouth-piece—no Parliament or Congress to declare, or amend its measures. Yet it changes—sometimes rapidly; never more rapidly than today. By few expounders of international law is sufficient notice taken of this element of change. And so there is an international law known to soldiers, diplomatists, and men of affairs, and another partly obsolete but still taught in books."



MR. BRYAN TELLS HIS REASONS FOR  
LEAVING CABINET.



Differs with Wilson on Question of International Commission to Settle Trouble with Germany and as to Warning Americans Against Sailing on Belligerent Ships.

Washington, June 9.—Just as the new American note to Germany was started on its way over the wires today, Mr. Bryan gave out this statement:

"My reason for resigning is clearly stated in my letter of resignation, namely, that I may employ as a private citizen the means which the President does not feel at liberty to employ. I honor him for doing what he believes to be right, and I am sure that he desires, as I do, to find a peaceful solution of the problem which has been created by the action of the submarines.

"Two of the points on which we differ, each conscientious in his conviction, are:

*"First, as to the suggestion of investigation by an international commission; and,*

*"Second, as to warning Americans against traveling on belligerent vessels or with cargoes of ammunition.*

#### SAYS TREATY RULES APPLY TO GERMANY

"I believe that this nation should frankly state to Germany that we are willing to apply in this case the principle which we are bound by treaty to apply to disputes between the United States and thirty countries with which we have made treaties providing for investigation of all disputes of every character and nature.

"These treaties, negotiated under this Administration, make war practically impossible between this country and these thirty governments, representing nearly three-fourths of all the people of the world.

"Among the nations with which we have these treaties are Great Britain, France and Russia. No matter what disputes may arise between us and these treaty nations, we agree that there shall be no declaration of war and no commencement of hostilities until the matters in dispute have been investigated by an international commission, and a year's time is allowed for investigation and report.



## U S. SHOULD MAKE ARBITRATION OFFER.

*"This plan was offered to all the nations without any exceptions whatever, and Germany was one of the nations that accepted the principle, being the twelfth, I think, to accept. No treaty was actually entered into with Germany, but I cannot see that that should stand in the way when both nations indorsed the principle.*

*"I do not know whether Germany would accept the offer, but our country should, in my judgment, make the offer.*

*"Such an offer, if accepted, would at once relieve the tension and silence all the jingoes who are demanding war. Germany has always been a friendly nation, and a great many of our people are of German ancestry. Why should we not deal with Germany according to this plan to which the nation has pledged its support.*

*"The second point of difference is as to the course which should be pursued in regard to Americans traveling on belligerent ships or with cargoes of ammunition.*

*"Why should an American citizen be permitted to involve his country in war by travelling upon a belligerent ship when he knows that the ship will pass through a danger zone?*

*"The question is not whether an American citizen has a right, under international law, to travel on a belligerent ship; the question is whether he ought not, out of consideration for his country, if not for his own safety, avoid danger when avoidance is possible.*

*"It is a very one-sided citizenship that compels a government to go to war over a citizen's rights and yet relieves the citizens of all obligations to consider his nation's welfare.*

*"I do not know just how far the President can legally go in actually preventing Americans from traveling on belligerent ships, but I believe the government should go as far as it can, and that in case of doubt it should give the benefit of the doubt to the government.*

## PRECEDENT FOR CAUTION TO PUBLIC

"But even if the government could not legally prevent citizens from traveling on belligerent ships, it could, and in my judgment, should earnestly advise Americans not to risk themselves or the peace of their country and I have no doubt that these warnings would be heeded.

*"President Taft advised Americans to leave Mexico when insurrection broke out there, and President Wilson has repeated the advice. This advice, in my judgment, was eminently wise, and I think the same course should be followed in regard to warning Americans to keep off vessels subject to attack.*

*"I think, too, that American passenger ships should be prohibited from carrying ammunition. The lives of passengers ought not to be endangered by cargoes of ammunition, whether that danger comes from possible explosions within or from possible attacks from without. Passengers and ammunition should not travel together. The attempt to prevent American citizens from incurring these risks is entirely consistent with the effort which our Government is making to prevent attacks from submarines.*

## RIOT WARNING A FAMILIAR ILLUSTRATION

"The use of one remedy does not exclude the use of the other. The most familiar illustration is to be found in the action taken by municipal authorities during a riot. It is the duty of the Mayor to suppress the mob and to prevent violence, but he does not hesitate to warn citizens to keep off the streets during the riots. He does not question their right to use the streets, but for their own protection and in the interest of order, he warns them not to incur the risks involved in going upon the streets when men are shooting at each other.

*"The President does not feel justified in taking the action above stated. That is, he does not feel justified—*

*"First, in suggesting the submission of the controversy to investigation, or*

*"Second, in warning the people not to incur the extra hazards in traveling on belligerent ships or on ships carrying ammunition.*

#### WILL PUT WILSON'S ATTITUDE UP TO PUBLIC

"And he may be right in the position he has taken, but as a private citizen, I am free to urge both of these propositions and to call public attention to these remedies in the hope of securing such an expression of public sentiment as will support the President in employing these remedies, if, in the future, he finds it consistent with his sense of duty to favor them."

Secretary Bryan said, in giving out his statement, that while it mentioned only two points of difference, he reserved any others for presentation in the future.

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#### STATEMENT BY PROF. GEORGE W. KIRCHWEY

*Former Dean of the Law School, Columbia University, New York; Editor Historical Manuscripts for the State of New York:*

"It seems to me that Mr. Bryan's retirement from the Cabinet in the present crisis is little short of a calamity, as it indicates the triumph of what a morning newspaper has called the 'war party' in the Administration at Washington.

"As I interpret the expression, it doesn't mean that the President or any of his advisers are bent on war with Germany. We know, on the contrary, that they are sincerely desirous of keeping the United States out of the conflict raging in the other half of the world.

"What it seems to signify is that the party that has prevailed over Mr. Bryan will entertain no way of dealing with Germany but the strenuous way—the German Government must squarely back down and accept the American interpretation of her rights as a belligerent or count us among her enemies.

"This is a high and mighty attitude, and will be warmly welcomed by our militant pro-Britons, who want to drag us into the war, as well as by multitudes of peace-loving Americans who identify national honor and dignity with a belligerent attitude toward foreign Powers with which we are at variance.

"Personally, I believe the German position to be indefensible, just as I regarded the destruction of the *Lusitania* as a gross violation of neutral and human rights.

"But the task of statesmanship is not to give forcible and threatening expression to our sentiments of wrath and indignation; still less to demand prompt recognition of our principles of international morality.

"It is rather to secure our rights by means which will not bring greater calamities upon us and upon the world.

"Our true position in international affairs is that of trustee or guardian of neutral rights and of the sacred rights of humanity the world over.

"The notion that this duty can best be fulfilled—the notion that it can be fulfilled at all—by adopting a course which leads to our embroilment in the war, is a fatal illusion. There can be no more certain way of betraying those rights.

"There are other ways—ways to which we have again and again committed ourselves—by which our rights and the human rights which we hold in trust may be secured. Where is our 'American policy' of arbitration in this crisis?

"Why act alone instead of calling a conference of the neutral Powers to deal with a question which concerns them quite as much as it does us?

"Under the circumstances, then, I regard Mr. Bryan's resignation as a wise and patriotic act.

"It is in effect an appeal to the people, who are now, for the first time, put in a position to determine whether they want a strenuous policy which is almost sure to lead to war or a policy of moderation and conciliation which may secure us our rights without war.

*"After all, the issue of peace or war for the United States is too big an issue to be left to any one man or any group of men to determine. There is still time for the American people to make themselves heard."*

## Mr. Bryan's Statement

Published June 11, 1915

To the American People :

"You now have before you the text of the note to Germany—the note which it would have been my official duty to sign had I remained Secretary of State. I ask you to sit in judgment upon my decision to resign rather than to share responsibility for it.

*"I am sure you will credit me with honorable motives, but that is not enough. Good intentions could not atone for a mistake at such a time, on such a subject and under such circumstances. If your verdict is against me, I ask no mercy; I desire none if I have acted unwisely.*

*"A man in public life must act according to his conscience, but however conscientiously he acts, he must be prepared to accept without complaint, any condemnation which his own errors may bring upon him; he must be willing to bear any deserved punishment, from ostracism to execution. But hear me before you pass sentence.*

"The President and I agree in purpose: We desire a peaceful solution of the dispute which has arisen between the United States and Germany. We not only desire it, but with equal fervor we pray for it. But we differ irreconcilably as to the means of securing it.

"If it were merely a personal difference it would be a matter of little moment, for all the presumptions are on his side—the presumptions that go with power and authority. He is your President; I am a private citizen, without office or title, but one of the hundred millions of inhabitants.

## REAL ISSUE BETWEEN FORCE AND PERSUASION

"But the real issue is not between persons, it is between systems; and I rely for vindication wholly upon the strength of the position taken.

"Among the influences which governments employ in dealing with each other, there are two which are pre-eminent and antagonistic—force and persuasion. Force speaks with firmness and acts through the ultimatum; persuasion employs argument, courts investigation and depends upon negotiation.

"Force represents the old system—the system that must pass away. Persuasion represents the new system—the system that has been growing—all too slowly, it is true, but growing—for nineteen hundred years.

"In the old system war is the chief cornerstone—war which at its best is little better than war at its worst; the new system contemplates an universal brotherhood established through the uplifting power of example.

"If I correctly interpret the note to Germany it conforms to the standards of the old system rather than to the rules of the new, and I cheerfully admit that it is absolutely supported by precedents—precedents written in characters of blood upon almost every page of human history.

"Austria furnishes the most recent precedent. It was Austria's firmness that dictated the ultimatum against Serbia, which set the world at war.

"Every ruler now participating in this unparalleled conflict has proclaimed his desire for peace and denied responsibility for the war, and it is only charitable that we should credit all of them with good faith. They desired peace, but they sought it according to the rules of the old system. They believed that firmness would give the best assurance of the maintenance of peace, and faithfully following precedent they went so near the fire that they were, one after another, sucked into the contest.



## "FOLLIES OF FATAL SYSTEM REVEALED"

"Never before have the frightful follies of this fatal system been so clearly revealed as now. The most civilized and enlightened—aye, the most Christian—of the nations of Europe are grappling with each other as if in a death struggle.

"They are sacrificing the best and bravest of their sons on the battlefield; they are converting their gardens into cemeteries and their homes into houses of mourning; they are taxing the wealth of today and laying a burden of debt on the toil of the future; they have filled the air with thunderbolts more deadly than those of Jove, and they have multiplied the perils of the deep.

"Adding fresh fuel to the flame of hate, they have daily devised new horrors, until one side is endeavoring to drown non-combatant men, women and children at sea, while the other side seeks to starve non-combatant men, women and children on land.

"And they are so absorbed in alternate retaliations and in competitive cruelties that they seem, for the time being, blind to the rights of neutrals and deaf to the appeals of humanity. A tree is known by its fruit. The war in Europe is the ripened fruit of the old system.

"This is what firmness, supported by force, has done in the Old World. Shall we invite it to cross the Atlantic? Already the jingoes of our country have caught the rabies from the dogs of war; shall the opponents of organized slaughter be silent while the disease spreads?

## U. S. SHOULD "LEAD WORLD OUT OF WAR"

"As an humble follower of the Prince of Peace; as a devoted believer in the prophecy that "they that take the sword shall perish with the sword," I beg to be counted among those who earnestly urge the adoption of a course in this matter which will leave no doubt of our Government's willingness to continue negotiations with Germany until an amicable understanding is

reached, or at least until, the stress of war over, we can appeal from Philip drunk with carnage to Philip sobered by the memories of an historic friendship and by a recollection of the innumerable ties of kinship that bind the Fatherland to the United States.

"Some nation must lead the world out of the black night of war into the light of that day when 'swords shall be beaten into plowshares.'

"Why not make the honor ours? Some day—why not now—the nations will learn that enduring peace cannot be built upon fear, that good will does not grow upon the stalk of violence. Some day the nations will place their trust in Love, the weapon for which there is no shield; in love, that suffereth long and is kind; in love, that is not easily provoked, that beareth all things, believeth all things, hopeth all things, endureth all things; in love which, though despised as weakness by the worshippers of Mars, abideth when all else fails."—W. J. BRYAN.





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